

Exhibit “V” to Amended Verified Petition

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TOWN OF MONTGOMERY

PLANNING BOARD

William Kelly
 Planning Board Chairman
 Town Hall, 74 Main St.
 Montgomery, NY 12586

Re: Mehlon Trucking

Dear Mr. Kelly:

As you know, the Public Hearing for Special Exception Use was held by the Planning Board at its June 26th meeting. I request that the matter be placed on the second July Planning Board meeting agenda for discussion and, if appropriate, for action.

Fran Geissler of Wehran Engineering advises that she will be in a position to respond to the issues raised at the June 26th meeting. We hope to be able to discuss the matter with the Town Planner prior to the matter being placed on the next agenda.

Procedurally, it would appear that the Board, as Lead Agency, must make the initial SEQR determination. While this would appear to be a Type 1 action, (Disturbance of in excess of 10 acres), we feel that it is appropriate for a Negative Declaration in view of a number of circumstances. First, we believe that all reasonable mitigating measures which could be incorporated as part of an Environmental Impact Statement have already been incorporated in the Special Exception Use Application. Secondly, all of the specific mitigating measures required by DEC regulation have been incorporated into the application. Lastly, there is concurrent jurisdiction being exercised by DEC and a mine use permit must be obtained from the DEC. DEC has indicated that the application is incomplete because the Planning Board, as Lead Agency, has not yet made the threshold environmental determination. In other words, DEC will not process the State Mining Permit until the Planning Board makes the initial environmental determination. It would appear prudent for both mining applications, Town and State, to be processed contemporaneously. I therefore request that the Planning Board make the environmental significance determination as soon as practical.

John F.X. Burke
 DiNARDO, GILMARTIN & BURKE, P.C.

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ATTORNEYS AT LAW

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I will call you in approximately ten days to determine when this matter can be placed on the agenda.

Very truly yours,



Robert E. DiNardo

RED/mv
cc: Fran Geissler-Wehran Engineering
Mehlon Trucking
Richard Hoyt, Esq.
Ed Garling

KELLY.WM/MU